

No.1426-59 CIVIL ACTION

Dodge Inc.

VERSUS

Fischer

DATE	COURT CLERK'S MEMORANDUM	JUDGE
MAY 4 1960	Called <i>asst. PRETRIAL EXAMINER</i>	

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Dodge, Incorporated,
702 North Hudson Avenue
Chicago, Illinois

Plaintiff

vs.

Arthur Fisher,
Register of Copyrights
Washington, D.C.

Defendant

FILED

MAY 25 1959

HARRY M. HULL, Clerk

Civil Action No. 1426-59

COMPLAINT FOR DECLARATORY JUDGMENT
AND MANDAMUS ORDER

Now comes Plaintiff, DODGE, INCORPORATED, by its attorneys, and alleges as follows:

1. Plaintiff is a corporation organized and existing by virtue of the laws of the State of Illinois, with its principal office at 702 North Hudson Avenue, in Chicago, Illinois.

2. Defendant is the Register of Copyrights of the United States, having his official residence in the District of Columbia.

3. Jurisdiction of this Court is founded upon the copyright laws of the United States (Title 17); Section 10 of the Act of June 11, 1946, commonly known as the Administrative Procedure Act, (60 Stat. 243; 5 U.S.C. § 1009); Sections 2201 and 2202 of the Judicial Code of the United States; and Sections 11-305 and 11-306 of the District of Columbia Code.

4. Michael J. Albanese is an employee of Plaintiff and, as a part of his duties in such employ, did create two separate

works of art each in the form of a trophy base comprising a vertically disposed metal column secured between two horizontally disposed, generally rectangular elements, such bases being intended to support different sculptered figures which are secured on the top of the upper rectangular element. One of said bases created by said Michael J. Albanese is identified as Base FF and is shown in the photographs attached hereto and marked Exhibit A and Exhibit B respectively. The other of said bases is identified as Base GG and is shown in the photographs attached hereto and marked Exhibit C and Exhibit D respectively.

5. Each of said Bases FF and GG is a "work of art" so as to come within the terms of the copyright laws of the United States and, upon compliance with the statutory requirements of publication and notice, is entitled to be registered as such a work by the Register of Copyrights.

6. Plaintiff is the owner of all copyrightable subject matter of said Bases FF and GG and did publish with the required statutory notice of copyright said Base FF on October 1, 1958, and said Base GG on November 25, 1958, respectively.

7. In January, 1959, Plaintiff, through its authorized agent, Mr. Joseph P. Cavanaugh, did complete a Form G application prescribed by Defendant for copyright registration for each of said Bases FF and GG. On or about January 12, 1959, such applications were transmitted to Defendant herein, Register of Copyrights, with the fees prescribed by statute for registration

of said trophy bases as works of art in sculpture and with photographs of said bases under the optional deposit provisions of paragraph 4 of Form G applications, Plaintiff thereby having complied with the statutory requirements for registration of said trophy bases as works of art.

8. Defendant, by his agents, has wilfully refused to register Plaintiff's copyright of Base FF and Base GG as works of art.

WHEREFORE, Plaintiff prays for:

- (a) A declaratory judgment that each of said Bases FF and GG is a "work of art" and is entitled to be registered, as such, under the Copyright Laws of the United States;
- (b) A declaratory judgment that Plaintiff, as owner of the Copyrightable subject matter, said trophy Bases FF and GG, is entitled to the registration herein sought;
- (c) An order directing Defendant to effect such registration;
- (d) Such other relief as may appear equitable and just.

Harmon, Pierce & Kurz

Of Counsel:

OOMS, WELSH AND BRADWAY
1 North LaSalle Street
Chicago 2, Illinois

By Robert B. Harmon
Perpetual Building, Suite 711
1111 E Street, N.W.
Washington 4, D.C.

(77)

Exhibit A



FILED

MAY 25 1959

HARRY M. HULL, Clerk

Dodge, Incorporated

JAN 16 1959

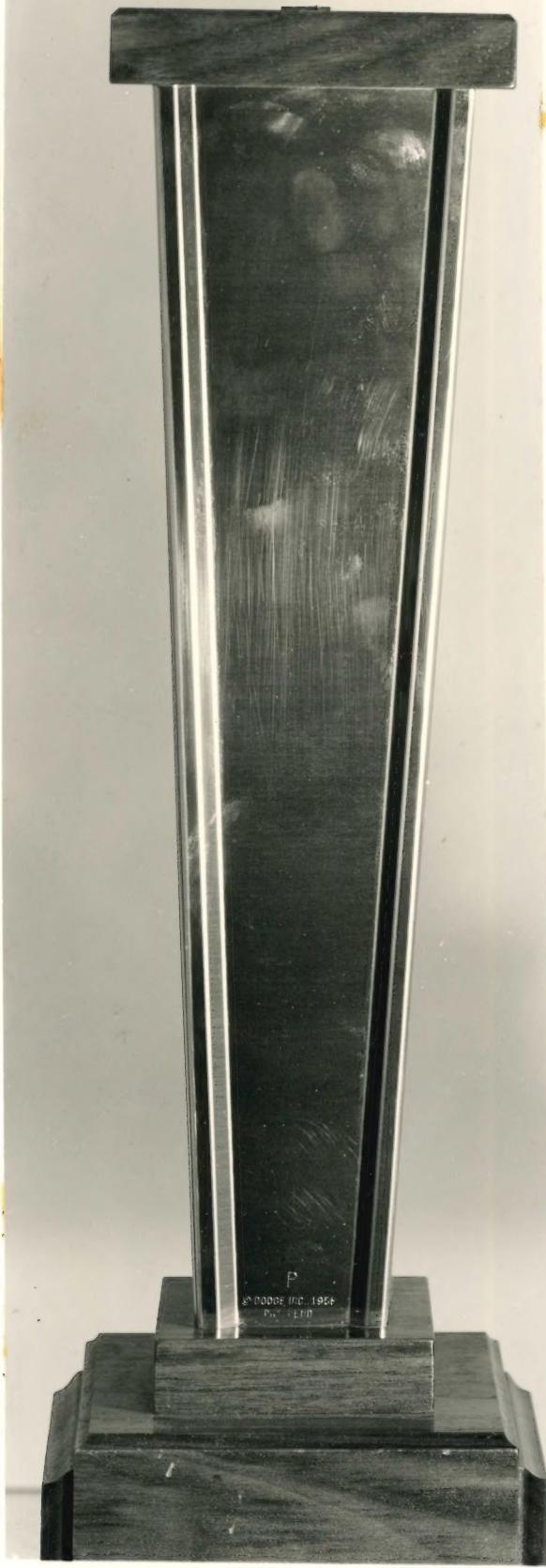
Title: Ornamental Trophy (FF)

Exhibit B

FILED

MAY 25 1959

HARRY M. HULL, Clerk



Dodge, Incorporated
Title: Ornamental Trophy (77)

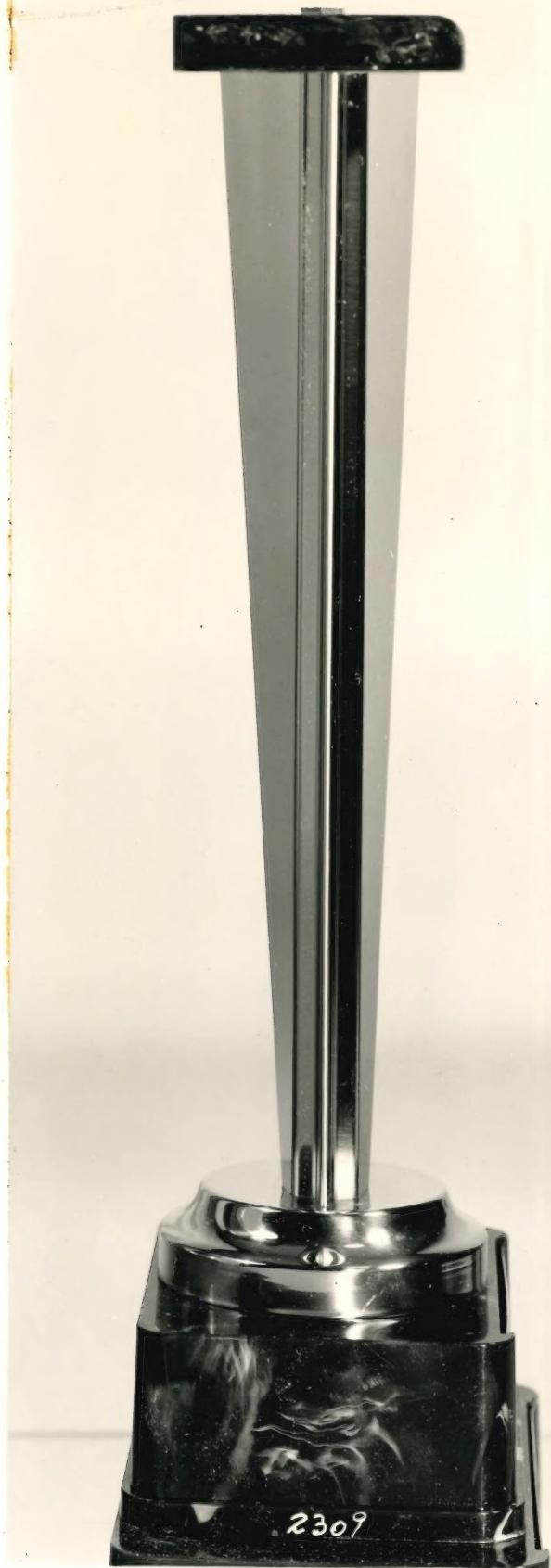
JAN 14 1959

(44)
Exhibit C

FILED

MAY 25 1959

HARRY M. HULL, Clerk



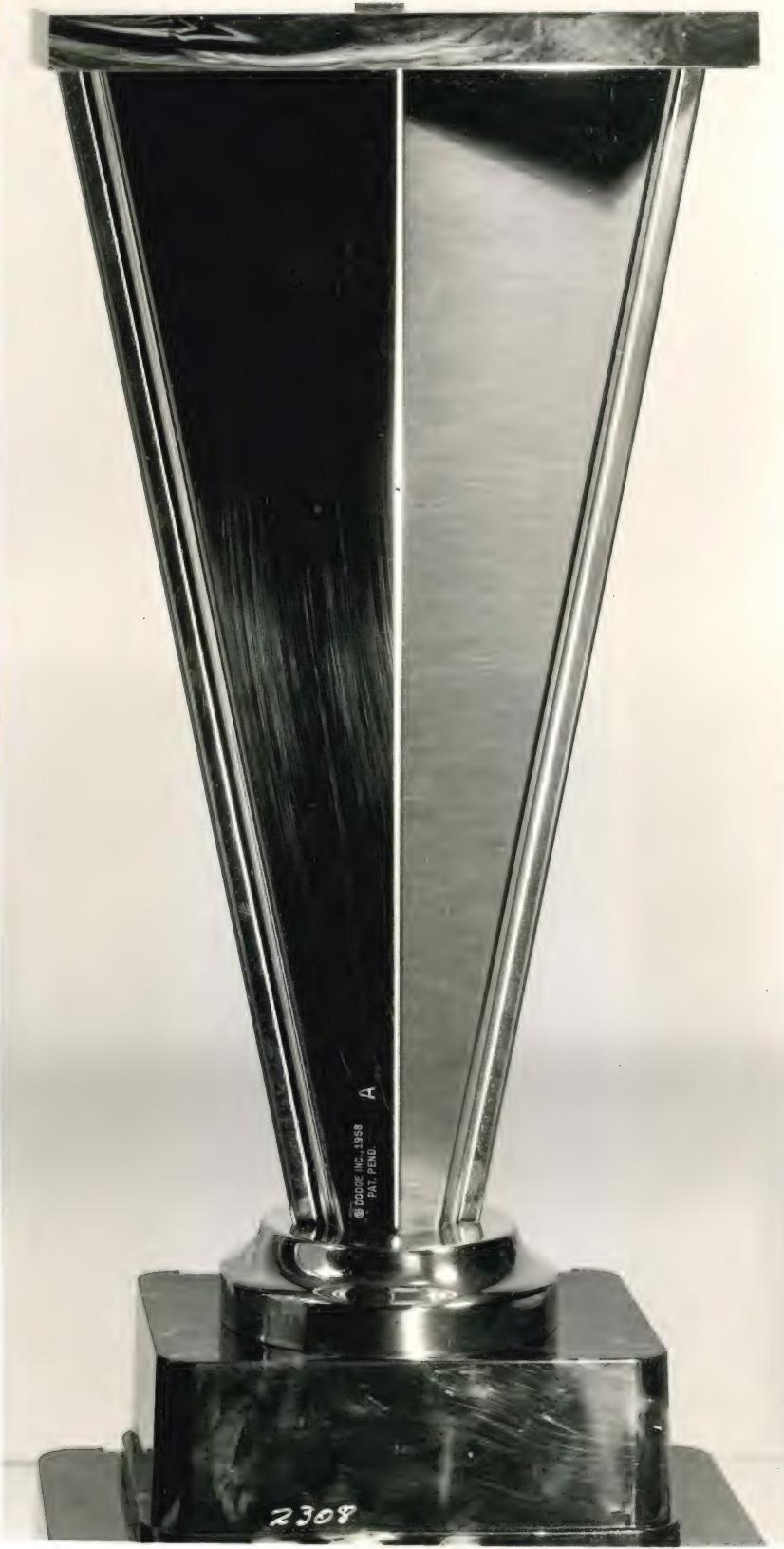
Dodge, Incorporated JAN 14 1959
Title: Ornamental Trophy (G.G.)

Exhibit D

FILED

MAY 25 1959

HARRY M. HULL, Clerk



Dodge, Incorporated
Title: Ornamental Trophy (S.S.)

JAN 14 1959

United States District CourtFOR THE
District of Columbia

CIVIL DIVISION

1426-59
CIVIL ACTION FILE NO.....

DODGE INCORPORATED

Plaintiff

v.

ARTHUR FISHER
Register of Copyrights18 a
a 15

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon Harmon. Pierce & Kurz

plaintiff's attorney , whose address is 1111-E.St., N.W., Wash, D.C.,

an answer to the complaint which is herewith served upon you, within ~~X~~ days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

HARRY M. HULL
Clerk of Court.
John C. Dayland
Deputy Clerk.

Date: May 25, 1959

[Seal of Court]

RETURN ON SERVICE OF WRIT

I hereby certify and return, that on the _____ day of _____ , 19_____,

I received this summons and served it together with the complaint herein as follows:

MARSHAL'S FEES

Travel _____ \$_____

United States Marshal.

Service _____

By _____

Deputy United States Marshal.

Subscribed and sworn to before me, a _____

this _____

day of _____, 19_____.
.

[SEAL]

Note.—Affidavit required only if service is made by a person other than a United States Marshal or his Deputy.

No. _____

United States District Court

FOR THE

v.

SUMMONS IN CIVIL ACTION

Returnable not later than _____ days
after service.

Attorney for Plaintiff.

FPI-LK-7-23-58-50M-5681

Plaintiff's Attorney

CA 1936-34

Post Office Department

OFFICIAL BUSINESS



PENALTY FOR PRIVATE USE TO AVOID PAYMENT OF POSTAGE, \$500

(GPO)

POSTMARK OF DELIVERING

OFFICE

Return to U.S. Marshal

Street and Number,
or Post Office Box,

(NAME OF SENDER)

Courthouse 3rd & Conss.

REGISTERED ARTICLE

No. 333888

INSURED PARCEL

WASHINGTON,

D. C.

No. _____

RETURN RECEIPT

*Received from the Postmaster the Registered or Insured Article, the number
of which appears on the face of this Card.*

1

Attn: General Pres.
(Signature or name of addressee)

2

Delivery by Agent
(Signature of addressee's agent—Agent should enter addressee's name on line ONE above)

Date of delivery *Sept 29, 1951*

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

Dodge Inc.

Clerk's No. 1426-59

v/s.

U. S. Marshal No. _____

Fisher

Received by U. S. M. _____

(Date and time)

I hereby certify and return that I served the annexed *SAC*
on the therein-named *Elmer Goch, U.S. District Attorney*
(Writ)
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with

Mrs. Wall, Sec.
personally at U.S. Courthouse in the said District
(Address—Street number, apartment number) (City)
at a. m.—p. m., on the 25 day of May, 1959

Marshal's fees _____

CHARLES H. WARD, JR.
United States Marshal.

Mileage _____

By *Elmer Garmen*
Deputy.

FILED
JUN 2 1959

DARRY M. HULL, Clerk

I hereby certify and return that I served the annexed *SAC*
on the therein-named *Attorney General*
(Writ)
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with *him*

by registered mail
personally at Dept. Justice in the said District
(Address—Street number, apartment number) (City)
at a. m.—p. m., on the 29 day of May, 1959

Marshal's fees _____

United States Marshal.

Mileage _____

By *Donald Anderson*
Deputy.

U. S. MARSHAL'S RETURN OF SERVICE

United States of America

DISTRICT OF COLUMBIA

Dodge Incorporated

vs.

Clerk's No. CA - 1426-59

Arthur Fisher

U. S. Marshal No. _____

Received by U. S. M. _____
(Date and time)

I hereby certify and return that I served the annexed Summons - Complaint
(Writ)
on the therein-named Arthur Fisher
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with Mrs. Lembo,
Special Ass't to Arthur Fisher, attorney, Washington

personally at LIBRARY OF CONGRESS Annex, WASH. D.C. in the said District
(Address—Street number, apartment number) (City)

at 3:15 a. m.—p. m., on the 26 day of May, 1959

Marshal's fees _____

United States Marshal.

Mileage _____

By W. Skeley Deputy.

FILED
JUN 2 1959
BARRY M. HULL, Clerk

I hereby certify and return that I served the annexed Summons - Complaint
(Writ)
on the therein-named Arthur Fisher
(Individual, company, corporation, etc.)

by handing to and leaving a true and correct copy thereof with _____

personally at _____ in the said District
(Address—Street number, apartment number) (City)

at _____ a. m.—p. m., on the _____ day of _____, 19_____, 19_____

Marshal's fees _____ United States Marshal.

Mileage _____ By _____
Deputy.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DODGE INCORPORATED, :
Plaintiff, :
v. : Civil Action No. 1426-59
ARTHUR FISHER :
Register of Copyrights, :
Defendant. :
FIL

FILED

JUL 24 1962

STIPULATION

HARRY M. HULL, Clerk

It is hereby stipulated and agreed by and between
counsel for the parties hereto that the time within which
the defendant may answer, move or otherwise plead, be and
the same is hereby extended to and including September 24,
1959.

Approved:

ROBERT J. ASMAN
Assistant United States Attorney
Attorney for Defendant

~~J. Srinivas~~
Chief Judge

ROBERT B. HARMON
Attorney for Plaintiff.

DATE:

E: July 22, 1959

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

FILED

SEP 24 1959

DODGE, INCORPORATED,)
Plaintiff) HARRY M. HULL, CLERK
v.)
ARTHUR FISHER,) Civil Action No. 1426-59
Register of Copyrights,)
Defendant)

ANSWER TO COMPLAINT
FOR DECLARATORY JUDGMENT AND ORDER

Now comes the defendant by and through his attorney,
the United States Attorney, and in answer to the complaint
avers as follows:

First Defense

The complaint fails to state a claim upon which relief
can be granted.

Second Defense

Answering specifically the numbered paragraphs of the
complaint, defendant avers as follows:

1. Defendant is without knowledge or information
sufficient to form a belief and therefore denies each and
every allegation of Paragraph 1.
2. Defendant admits that he is the Register of Copy-
rights of the United States and that his official residence
is in the District of Columbia as stated in Paragraph 2.
3. Defendant denies the allegations concerning juris-
diction in Paragraph 3 and further denies that plaintiff has
a cause of action against the defendant.
4. Defendant is without knowledge or information
sufficient to form a belief and therefore denies each and

every allegation of Paragraph 4, except that defendant denies that the bases FF and GG constitute works of art under the Copyright Laws of the United States.

5. Defendant denies that each of the "Bases FF and GG" constitute a "work of art" within the meaning of the Copyright Laws of the United States. Defendant further denies that there can be a "publication and notice," within the meaning of the Copyright Laws, of the "Bases FF and GG." Defendant further denies that said bases are entitled to be registered as a "work" by the Register of Copyrights.

6. Defendant is without knowledge or information sufficient to form a belief and therefore denies each and every allegation of Paragraph 6, except defendant denies that said "Bases FF and GG" embody copyrightable subject matter, and further denies that said bases could be "published" or provided with a "statutory notice" within the meaning of the Copyright Laws.

7. Defendant admits that a Form G Application For Registration of a Claim to Copyright In a Work of Art prepared by Joseph P. Cavanaugh and the fee of Four Dollars (\$4.00) for each of the "Bases FF and GG," were received in the Copyright Office on January 14, 1959, and that photographs of said bases were deposited at the same time in the Copyright Office; but defendant denies that said trophy bases constitute a "work of art" within the meaning of the Copyright Laws; and further denies that Form G or any form is applicable to the deposits for which registration is here sought. Defendant denies all remaining allegations in Paragraph 7.

8. Defendant denies that plaintiff has obtained a copyright on "Base FF and Base GG" as "works of art" or as any other "work" under the Copyright Laws; and further denies that plaintiff is the owner of any copyright on said bases. Defendant admits that he has refused to register said "Bases FF and GG" as "works of art." Defendant denies all remaining allegations in Paragraph 8.

Third Defense

Defendant avers that the trophy "Bases FF and GG" are not "works of art" under Section 5 of the Copyright Act, Title 17 United States Code, and that they are not entitled to registration by the Register of Copyrights under the Copyright Laws of the United States.

Fourth Defense

Defendant avers that the trophy "Bases FF and GG," for which registration is sought, do not constitute the "writing" of an author or represent matter properly copyrightable under Article I, Section 8 of the Constitution and Title 17, United States Code.

Fifth Defense

Defendant avers that the trophy "Bases FF and GG" for which registration is sought, are not, as claimed by the plaintiff, the "writing" of an author under the Constitution and laws of the United States, but rather represent an article of manufacture and subject to protection, if any, under the Design Patent Laws, 35 U.S.C., Sections 171,173, where the period of the monopoly runs for 14 years and not 56 years (28 years plus 28 years renewal) as would be the case if registration were permitted under the Copyright Laws.

Michael J. Albanese, the alleged author of the "Bases FF and GG" has already sought protection under the Design Patent Laws through the filing in the United States Patent Office on January 15, 1959 of design patent applications, Serial Nos. 54190 and 54191.

Sixth Defense

Defendant avers, upon information and belief, that the "Bases FF and GG," for which copyright registration is sought, lack the originality required by the Copyright Laws, and are not entitled to registration in the Copyright Office, nor susceptible of protection under the Copyright Laws.

Seventh Defense

Defendant avers that the "Bases FF and GG" here in issue do not possess the originality necessary for the creation of a copyright monopoly (which unlike a patent can run for 56 years), in view of the following devices all of which are disclosed in patents or printed publications bearing a date prior to the alleged publication date of the devices "FF and GG" here in issue:

United States Patents

Design 39,566	Verbeck	Sept. 22, 1908
" 44,563	Haase	Aug. 26, 1913
" 50,857	West and Foster	May 29, 1917
" 78,189	Booth	April 9, 1929
" 78,984	Reh	July 16, 1929
" 136,931	Larson	Dec. 28, 1943
" 138,403	White	Aug. 1, 1944
" 148,886	Post	Mar. 2, 1948
" 177,744	Minea	May 22, 1956
" 183,198	Dodge	July 15, 1958
" 183,249	Dodge	(Filed) Aug. 16, 1957
" 183,799	Kramer and Dorn	Oct. 28, 1958
" 184,823	Mayeur	(Filed) Nov. 29, 1957
" 185,478	Wurtz	June 9, 1959
686,817	MacPhail	Nov. 19, 1901

Publications

Structural Bends Catalogue, 1941, by W.L. Stensgaard and Assoc. Inc., page 7.

Dodge Inc. catalogue, 1953, pages 17, 19, 23, 27.

Greller Inc. catalogue for 1953, pages 5, 7.

Dodge Inc. catalogue, 1955, pages 13, 18, 21.

Dodge Inc. catalogue, 1957, page 6.

and other prior art devices which when ascertained defendant prays leave to add to this answer.

Eighth Defense

Defendant avers that the sole intrinsic function of the "Bases FF and GG" is their utility and, hence, that they do not constitute a "writing" or the creation of an author and are not copyrightable under the Copyright Laws of the United States.

WHEREFORE, defendant having fully answered, demands judgment together with the costs of this suit.

Oliver Gasch
OLIVER GASCH

United States Attorney

Edward P. Troxell
EDWARD P. TROXELL
Principal Assistant United States Attorney

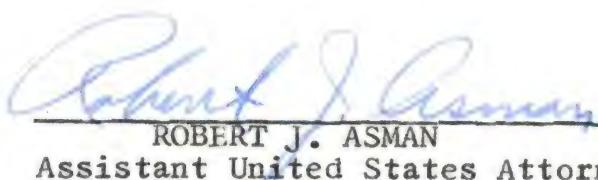
John F. Doyle
JOHN F. DOYLE
Assistant United States Attorney

Robert J. Asman
ROBERT J. ASMAN
Assistant United States Attorney

H. L. Godfrey
H. L. GODFREY
Attorney, Department of Justice

CERTIFICATE OF SERVICE

Copy of the foregoing Answer to Complaint For Declaratory Judgment and Order was served on Harmon, Pierce & Kurz, attorneys for the plaintiff by mailing the same to them, postage prepaid, at their address 1111 E Street, N.W., Washington, D. C., this 24th day of September, 1959.


ROBERT J. ASMAN
Assistant United States Attorney

Civil No. 1426-59

DODGE INC

Plaintiff ,

vs.

FISHER (copyrights)

Defendant.

2351

CAUSE CALENDAR

9-24-59

Attorney for plaintiff:

Harmon, Pierce & Kurz

1111 E. St. NW

Attorney for defendant:

Messrs. Gasch and Asman

U. S. Attys

H. L. Godfrey Dept. of Justice

The suit is for Decl Judgment

Mandamus

(W)

Harry M. Hull, Clerk

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DODGE, INC.,

Plaintiff,

v.

Civil Action No. 1426-59

ARTHUR FISHER,

Defendant.

FILED

JUL 12 1960

STIPULATION

HARRY M. HULL, CLERK

It is hereby stipulated by and between counsel for the parties hereto that uncertified printed or photostatic copies of United States and foreign patents and publications may be offered and received in evidence by either party hereto with the full force and effect of certified copies, and may be considered as having been filed, granted, or published, as the case may be, on the dates appearing thereon, and, where stated, by the publishers stated in said publications, subject to correction by production of originals or certified copies if error appear.

Oliver Gasch,
OLIVER GASCH
United States Attorney

Robert J. Asman,
ROBERT J. ASMAN
Assistant United States Attorney

H. L. Godfrey,
H. L. GODFREY, Attorney
Department of Justice
Attorneys for Defendant

HARMON, PIERCE & KURZ

By: Robert B. Harmon
ROBERT B. HARMON
Attorneys for Plaintiff

Date: July 9, 1960

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DODGE, INC., :
Plaintiff, :
v. : Civil Action No. 1426-59
ARTHUR FISHER, :
Defendant. :

FILED

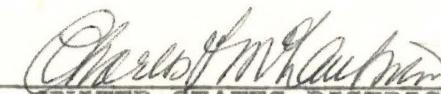
OCT 21 1960

CONSENT ORDER

HARRY M. HULL, CLERK

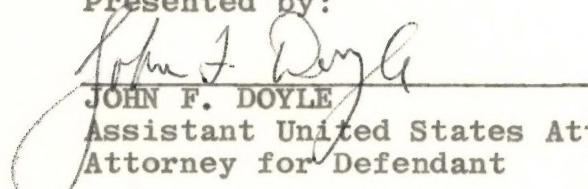
Upon consideration of oral representations by counsel for the plaintiff and counsel for the defendant that the interests of justice in the case recommend the extension of time for discovery and for filing further motions in the cause for a further six-month period, it is by the Court this 21st day of October, 1960,

ORDERED that the cause be and the same hereby is removed from the operation of Rule 13 of the Local Rules of this Court to and including May 4, 1961.

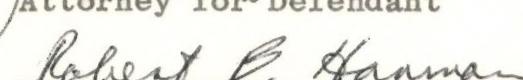


UNITED STATES DISTRICT JUDGE

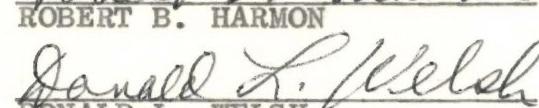
Presented by:



JOHN F. DOYLE
Assistant United States Attorney
Attorney for Defendant



ROBERT B. HARMON



DONALD L. WELSH
Attorneys for Plaintiff.

RECEIVED IN CLERK'S OFFICE OCT 21 1960

FILED

Cal. 9/24/59

PRAEICE

137850

United States District Court
for the District of Columbia

FILED

FEB 2- 1961

the 26th day of January 1961 HARRY M. HULL, CLERK

Dodge, Inc.

Arthur Fisher,
vs.
Register of Copyrights

Civil
Action No. 1426-59

The Clerk of said Court will please enter my appearance for the
Plaintiff, Dodge, Inc.

Martin J. Brown
Martin J. Brown
Address 425 13th Street, N.W. (Zone 4)

Attorney for Plaintiff

Cal. 9-24-59

PRAECLPE

227

PLC

United States District Court
for the District of Columbia

FILED

Call 5/4/60
the 6th day of March 1961 MAR 6 1961

DODGE, INC.

vs.

ARTHUR FISHER

HARRY M. HULL, CLERK
Civil Action No. 1426-59

The Clerk of said Court will please enter the above-entitled cause
as dismissed with prejudice.

Ellen Lee Park

ELLEN LEE PARK

Assistant United States Attorney

H. L. Godfrey

H. L. GODFREY, Attorney
Department of Justice
Attorneys for Defendant

Martin J. Brown

MARTIN J. BROWN

Address 425 - 13th Street, N. W.

Attorney for Plaintiff